

§ 9901.362

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observances under § 9901.362(k) and foreign language proficiency pay under § 9901.364.

(e) *Physicians and dentists.* Physicians and dentists (in occupational series 0602 and 0680, respectively) under NSPS are not eligible for premium pay except for compensatory time off for religious observances under § 9901.362(k).

(f) *Senior Executive Service.* Members of the Senior Executive Service under NSPS are not eligible for premium pay, except for compensatory time off for religious observances under § 9901.362(k).

§ 9901.362 Modification of standard provisions.

(a) *Premium pay limitations.* (1) An employee is covered by the premium pay limitations established under 5 U.S.C. 5547 and related regulations, except as provided in paragraph (a)(2) of this section. Notwithstanding the modification of various premium payments under this section, those payments are still considered to be payments in 5 U.S.C. chapter 55, subchapter V, for the purpose of applying 5 U.S.C. 5547 (including the purpose of determining the covered premium payments under 5 U.S.C. 5547(a)).

(2) Subject to § 9901.105, the Secretary may waive the limitations established by 5 U.S.C. 5547 and related regulations and instead apply an annual limitation equal to the rate payable under 3 U.S.C. 104 in the case of specified categories of employees and situations on a time-limited basis. Such a waiver may not apply with respect to additional compensation that is normally creditable as basic pay for retirement or any other purpose.

(b) *Overtime pay.* (1) An employee is covered by the overtime pay (including compensatory time off) provisions in 5 U.S.C. 5542 and 5543 and related regulations, subject to the requirements and modifications described in paragraphs (b)(2) through (b)(6) of this section.

(2) Consistent with 5 U.S.C. 5542(c), an employee who is subject to section 7 of the Fair Labor Standards Act of 1938 (FLSA), as amended, is covered by OPM's FLSA overtime regulations in 5 CFR part 551.

(3) Compensation for irregular or overtime work performed by National

Guard Technicians is governed by 32 U.S.C. 709(h) and policies issued by the National Guard Bureau.

(4) Firefighters covered by 5 U.S.C. 5545b are subject to special overtime pay rules as described in that section and in 5 U.S.C. 5542(f) and in related regulations. (See also § 9901.361(d).)

(5) Compensatory time off earned under 5 U.S.C. 5543 must be used by the end of the 26th pay period after that in which it was earned. Compensatory time off not used within 26 pay periods will be paid at the overtime rate at which it was earned. Employees with unused compensatory time earned before June 8, 1997 (January 5, 1997, for Defense Logistics Agency employees), have had a separate "old compensatory time" account established for their use. Old compensatory time is charged only if the employee has insufficient current compensatory time (earned on or after June 8, 1997) to cover the compensatory time off requested. Within each category of compensatory time, the oldest will be charged first. When a DoD employee separates, moves to another Component, or transfers to another Federal agency, any unused compensatory time off balance will be paid at the overtime rate at which it was earned. Also, when an employee moves to a pay system that does not provide for compensatory time off (e.g., Senior Executive Service), any unused compensatory time off balance will be paid at the overtime rate at which it was earned.

(6) The following modifications to 5 U.S.C. 5542 and 5543 and related regulations apply:

(i) The overtime hourly rate cap for FLSA-exempt employees based on the rate of basic pay for the minimum rate for GS-10 does not apply; instead, an FLSA-exempt employee is entitled to an overtime hourly rate equal to 1.5 times the employee's adjusted salary hourly rate unless the employee is in a pay band for which the overtime hourly rate is set equal to the employee's adjusted salary hourly rate based on a determination by the Secretary, subject to § 9901.105;

(ii) An FLSA-exempt employee will be compensated for overtime work (whether regular or irregular or occasional) using a quarter of an hour as

the smallest fraction of an hour, with minutes rounded to the nearest full fraction of an hour;

(iii) An FLSA-exempt employee may not be credited with overtime hours of work for travel time unless that travel involves the performance of actual work while traveling; instead, any such noncreditable travel hours may be credited as earned compensatory time off for travel, subject to the requirements in paragraph (j) of this section; and

(iv) An FLSA-exempt employee may be required to receive compensatory time off under 5 U.S.C. 5543 in lieu of overtime pay, regardless of the type of overtime work or the amount of the employee's adjusted salary rate.

(c) *Night pay.* An employee is covered by the night pay provisions in 5 U.S.C. 5545(a) and (b) and related regulations, except for the following modifications:

(1) Night pay is payable for irregular or occasional overtime work in the same manner it is payable for regularly scheduled work; and

(2) Night pay is not payable during paid absences, except for a period of court leave, military leave, time off awarded under 5 U.S.C. 4502(e), or compensatory time off during religious observances, or when excused from duty on a holiday.

(d) *Sunday pay.* An employee is covered by the Sunday pay provisions in 5 U.S.C. 5546 and related regulations, except for the following modifications:

(1) Work for which Sunday pay is payable (*i.e.*, Sunday work) is limited to applicable hours of work that are actually performed on Sunday (*i.e.*, the definition of "Sunday work" in 5 CFR 550.103 applies except that non-Sunday hours are excluded even if those hours are within a daily tour of duty that includes Sunday hours); and

(2) Consistent with section 624 of the Treasury and General Government Appropriations Act, 1999 (as found in section 101(h) of Division A of Public Law 105-277, October 21, 1998), Sunday pay is not payable unless an employee actually performed work during the time corresponding to such pay (*i.e.*, no Sunday pay for periods of paid leave, compensatory time off, credit hours, paid excused absence, or other paid time off).

(e) *Pay for holiday work.* An employee is covered by the holiday premium pay provisions in 5 U.S.C. 5546 and related regulations, except for the following modifications:

(1) Holiday premium pay is paid at twice an employee's adjusted salary hourly rate for each hour (including overtime hours) an employee is ordered or approved to work on a holiday;

(2) For FLSA-exempt employees, the payment for overtime hours worked on a holiday has two components: Payment required under paragraph (b) of this section for overtime worked, and an additional amount under this paragraph (e) such that the total payment for each hour is twice the employee's adjusted salary hourly rate; and

(3) For FLSA-nonexempt employees, the payment for overtime hours worked on a holiday has two components: Payment required under 5 CFR 551.512 for overtime worked, and an additional amount under this paragraph (e) such that the total payment for each hour is twice the employee's adjusted salary hourly rate.

(f) *Standby duty pay.* (1) An employee is covered by the standby duty pay provisions in 5 U.S.C. 5545 (c)(1) and related regulations, subject to the requirements and modifications in paragraphs (f)(2) through (f)(6) of this section.

(2) Except as provided in paragraph (f)(3), eligibility for regularly scheduled standby duty is limited to firefighters classified to the 0081 occupation who are not eligible for coverage under 5 U.S.C. 5545b, and to emergency medical technicians not involved in fire protection activities who are required to perform standby duty.

(3) The Secretary may approve extending standby duty premium pay coverage to occupations other than those cited in paragraph (f)(2) of this section. Component proposals to extend coverage will explain why employees within the specified occupational group must regularly remain at the duty station longer than ordinary periods of duty, a substantial part of which involves remaining in a standby status rather than performing actual work, and must address how the criteria in 5 CFR 550.143 are met.

(4) The standby percentage is always multiplied by an employee's adjusted salary rate regardless of the amount.

(5) Standby pay attributable to use of an adjusted salary rate exceeding the applicable GS–10, step 1, rate limitation is not considered to be paid under 5 U.S.C. 5545(c)(1) and thus is not creditable basic pay for retirement purposes.

(6) No additional premium pay for hours of overtime work (whether regularly scheduled or irregular or occasional), including compensatory time off, is payable to an employee receiving standby duty pay.

(g) *Administratively uncontrollable overtime pay.* The administratively uncontrollable overtime pay provision in 5 U.S.C. 5545(c)(2) is waived and will not be applied to NSPS employees. Compensation for such work will be made under the applicable provisions of this section.

(h) *Law enforcement availability pay.* An employee is covered by the law enforcement availability pay provisions in 5 U.S.C. 5545a and related regulations, except that the reference to “premium pay” in 5 CFR 550.186 will be interpreted to refer to the applicable title 5 premium payments and to the corresponding modified provisions in this section. In addition, the reference to “limitation on premium pay” in 5 CFR 550.185(a)(2) will be construed to refer to the limitations under 5 U.S.C. 5547 and to the corresponding modified provision in paragraph (a) of this section.

(i) *Pay for duty involving physical hardship or hazard.* (1) An employee is covered by the hazardous duty pay provisions in 5 U.S.C. 5545(d) and related regulations, subject to the requirements and modifications described in paragraphs (i)(2) through (i)(6) of this section.

(2) In determining eligibility for hazardous duty pay, an authorized management official will apply occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 as published in Subtitle B, Chapter XVII, of title 29, United States Code, or, in the absence of a permissible exposure limit issued

by the Secretary of Labor, other applicable standard promulgated by the Secretary.

(3) Subject to § 9901.105, the Secretary may establish new categories of hazardous duty pay in addition to those found in Appendix A to subpart I of 5 CFR part 550. Components may request a new category of hazardous duty pay be established and must submit, with their request, the information required in 5 CFR 550.903(b).

(4) Except as provided in paragraphs (i)(5) and (i)(6) of this section, an employee is paid a hazard pay differential when he or she is assigned to and performs a duty specified in Appendix A to subpart I of 5 CFR part 550 or as provided under paragraph (i)(3) of this section.

(5) An employee will be eligible to receive hazardous duty pay when an authorized management official determines—

(i) One or more of the conditions requisite for such payment exist; and

(ii) Safety precautions, protective or mechanical devices, protective or safety clothing, protective or safety equipment, or other preventive measures have not reduced the element of hazard below the permissible exposure limits promulgated by the Secretary of Labor or any applicable standard promulgated by the Secretary, consistent with paragraph (i)(2) of this section.

(6) Hazard pay differentials are not payable to employees in occupations or jobs in which unusual physical risk is an inherent characteristic of the occupation or job, such as police officer, emergency medical technician, test pilot, ordnance/explosives/incendiary inspector, and engineering technician performing inspection functions inside fuel storage tanks, tunnels, or shafts. The classification of the employee's position (*i.e.*, determination of pay band level) includes a consideration of the hazardous duty or physical hardship. For the purposes of this paragraph, the phrase “includes a consideration of the hazardous duty” means that the duty is one element considered in determining the pay band level of the position—*i.e.*, the knowledge, complexities, skills and abilities required to perform

that duty are considered in the classification of the position. Such consideration does not require the hazardous duty or physical hardship to be pay band controlling.

(j) *Compensatory time off for travel.* (1) An employee is covered by the compensatory time off for travel provisions in 5 U.S.C. 5550b and related regulations, subject to the requirements and modifications described in paragraphs (j)(2) through (j)(7) of this section.

(2) The term “official duty station” as defined in the related regulations is not applicable; instead, the term “official worksite” is used to determine an employee’s entitlement to compensatory time off for travel. The term “official worksite” has the meaning given in 5 CFR 531.605.

(3)(i) Time spent commuting between an employee’s residence and the workplace (official or temporary worksite) is not creditable for the purpose of compensatory time off for travel, except as provided in paragraph (j)(3)(ii) of this section.

(ii) If an employee is required to travel to a temporary worksite and if the one-way commuting time exceeds the employee’s normal one-way commuting time by more than 1 hour, the commuting time beyond 1 hour may be credited.

(4) If an employee is required to travel directly between his or her residence and a transportation terminal, the travel time is creditable as time in a travel status. The travel time outside regular working hours directly to or from a transportation terminal is creditable as time in a travel status. However, if the travel occurs on a day that the employee is regularly scheduled to work, the time the employee would have spent in normal home-to-work or work-to-home commuting must be deducted.

(5) An employee earns compensatory time off for time spent in a travel status away from the official worksite when such time is not otherwise compensable.

(6) Employees must file requests for credit of compensatory time off for travel within 10 workdays after returning to the official duty station, or within 10 workdays of returning from temporary duty (TDY) assignment or

approved leave which immediately follows the TDY during which the compensatory time off for travel was earned, by submitting a travel itinerary, or any other documentation acceptable to the employee’s supervisor, in support of the request. If not submitted within 10 workdays, the employee will forfeit his or her claim to the compensatory time off for travel. Compensatory time off for travel will be credited in increments of 6 minutes or 15 minutes and will be tracked and managed separately from other forms of compensatory time off.

(7)(i) When an employee moves from an NSPS position to a non-NSPS position within the Department, in which the employee will be eligible for compensatory time off for travel under 5 CFR part 550, subpart N, he or she will retain unused compensatory time off for travel. The time elapsed from the end of the pay period in which the compensatory time off was earned through the date of conversion will count as elapsed time in applying the limit for usage in 5 CFR part 550, subpart N.

(ii) When an employee moves from a non-NSPS position to an NSPS position within the Department, he or she will retain unused compensatory time off for travel. The time elapsed from the end of the pay period in which the compensatory time off was earned through the date of conversion will count as elapsed time in applying the limit for usage established under 5 CFR 550.1407.

(k) *Compensatory time off for religious observances.* An employee is covered by the compensatory time off for religious observances provisions in 5 U.S.C. 5550a and related regulations, subject to the following requirements and modifications:

(1) An employee’s request for time off should not be granted without simultaneously scheduling the hours during which the employee will work to make up the time (unless the employee earned the needed hours in advance); and

(2) An employee may not receive payment for any unused compensatory time off for religious observances

under any circumstances. This prohibition against payment applies to surviving beneficiaries in the event of the individual's death.

(1) *Air traffic controller differential.* (1) The air traffic controller differential provisions in 5 U.S.C. 5546a are waived and not applicable to NSPS employees, except for subsections (a)(1) and (d) of that section.

(2) An employee is covered by the air traffic controller differential provisions in subsections (a)(1) and (d) of 5 U.S.C. 5546a, subject to the modification described in paragraph (1)(3) of this section.

(3) The reference to the grade levels of GS-9 and GS-11 in 5 U.S.C. 5546a(a)(1) must be construed to mean a comparable level of work as determined under the NSPS classification structure.

§ 9901.363 Premium pay for health care personnel.

(a) *Coverage.* (1) This section applies to DoD health care personnel covered under NSPS who may be eligible for premium pay, as described in paragraphs (b), (c), and (d) of this section. For the purpose of this section, *health care personnel* means employees providing direct patient care services or services incident to direct patient care services. Examples include employees in the following occupations: nurse, biomedical engineer, dietitian, dental hygienist, psychologist, and medical records technician.

(2) Premium pay under this section is not considered part of basic pay for any purpose, nor is it used in computing a lump-sum payment for leave under 5 U.S.C. 5551 or 5552.

(b) *On-call premium pay.* (1) When health care personnel are not otherwise compensated for on-call time, heads of Components may authorize on-call premium pay under this section for officially scheduled "on-call" time which requires these employees to restrict their activities sufficiently to be available to return to the worksite promptly when it is necessary.

(2) To be paid on-call premium pay, an employee must be officially scheduled to be on-call outside his or her regular duty hours or during hours on

a holiday when the employee is excused from regular duty.

(3) An employee may not be scheduled to be on-call unless it is essential for the employee to be immediately available to return to the worksite.

(4) An employee officially scheduled to be on-call will be paid 15 percent of his or her adjusted salary hourly rate for each hour of on-call status.

(5) An employee may not receive on-call pay during periods of actual work. When an employee on-call is required to return to work status, on-call pay will be suspended. When released from the requirement to perform actual work, the employee will return to the remaining scheduled on-call status.

(6) An employee may not be charged leave during periods of regularly scheduled on-call duty; nor may such an employee receive on-call premium pay when, because of leave or other authorized absence, the employee is not expected to be able to return to the worksite immediately.

(c) *Night pay for health care personnel.*

(1) Health care personnel working a tour of duty, any part of which falls between 6 p.m. and 6 a.m., with 4 or more hours falling between 6 p.m. and 6 a.m., will be paid additional pay for each hour of work on such tour. When fewer than 4 hours of work fall between 6 p.m. and 6 a.m., health care personnel will be paid additional pay for each hour of work performed between 6 p.m. and 6 a.m. Night pay for health care personnel is 10 percent of the employee's hourly rate of adjusted salary. An employee receiving night pay under this section may not also receive night pay under § 9901.362(c).

(2) Health care personnel are entitled to pay for night duty for a period of paid absence only for a period of court leave, military leave, time off awards under 5 U.S.C. 4502(e), or compensatory time off for religious observances.

(3) When excused from work because of a holiday or in-lieu-of holiday, health care personnel are entitled to the night pay that would have applied had they not been excused from work.

(d) *Pay for weekend duty for health care personnel.* (1) Health care personnel who work a tour of duty, any part of which falls in the 2-day period between midnight Friday and midnight Sunday,